IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 34201 of 2004(V)

OS.205/2000 of PRL.MUNSIFF, KASARAGOD

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PETITIONER:

T.M.NAFEESA, D/O.T.M.MOIDU, KOLAVAYAL,
AJANUR VILLAGE, HSODURGE TALUK, P.O.KOLAVAYAL,
KASARAGOD DISTRICT.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS:

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1. K.C.ABDULLA, S/O.K.C.MAMMUNHI,
KALLINGAL, PALLIKKARA VILLAGE, HOSDURG TALUK,
P.O.PALLIKKARA, KASARAGOD DISTRICT.

2. SHAHUL HAMEED,S/O.SULAIMAN HAJI, OF
DO. DO.

BY ADV. SRI.V.RAJENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Ext.P1: True copy of report dated 21-2-2004 by the Advocate Commissioner filed in O.S. 205/2000, Munsiff's Court, Hosdurg)
Ext.P2: (True copy of plan submitted by the Advocate Commissioner in O.S. 205/2000)

Ext.P3:(True copy of affidavit and petition I.A. 1162 of 2004, in O.S. 205/2000 filed by the petitioner

Ext.P4: (True copy of order dated 9-9-2004 in I.A. 1162/2004 in O.S. 205 of 2000, Munsiff's Court, Hosdurg

Ext.P5: (True copy of order dated 9-9-2004 in I.A. 1286 of 2004 in O.S. 205/2000, Munsiff's Court, Hosdurg)

//True copy//

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M.N. KRISHNAN, J.

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W.P.(C) No. 34201 OF 2004 V
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Dated this the 31st May, 2007

J U D G M E N T

The writ petition is filed to set aside Ext. P4 order and remit Ext. P1 report and Ext. P2 plan to the Advocate Commissioner directing him to submit a fresh report and plan taking note of the objections raised by the parties. A perusal of the records would reveal that the plaintiff as well as the defendants moved I.A. No. 1162/04 and I.A. No. 1286/04 for remitting the commissioner's plan and report. The court below found that there are sufficient materials and so no remission is necessary. Challenging Ext. P4 order, the writ petition is filed. A survey plan is also submitted and there is challenge against the proper location of the property in accordance with the survey. This is a case where both parties are dissatisfied with the materials available and they want fresh and further materials for a proper disposal of the case. So, in the fitness of things it is just and necessary to direct the commissioner to re-inspect the property and submit a fresh plan and report after taking into account the

points raised by both the parties in the form of a work memo. Therefore, the writ petition is disposed of as follows:

1. The order under challenge, namely, Ext. P4 is set aside.

2. The trial court is directed to remit the commissioner's report and plan to the same commissioner and direct him to note the points required by the plaintiff and the defendants for the said purpose. Both parties are directed to file work memo before the commissioner regarding the points to be looked into.

3. In case the commissioner feels that the assistance of a surveyor is necessary the court shall appoint a surveyor and the expenses for the same as well as for the commissioner shall be met by the parties in equal halves.

M.N. KRISHNAN
JUDGE

jan/